January 8 1872

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

Docketed Aug 24 1870

No. ~~451~~ 239

FRANCIS J. COLLIER, DAVID C. HOUSTON, WILLIAM JEFFREY, JOHN T. PRESSLY, AND JOHN HAYS, PLAINTIFFS IN ERROR,

vs.

WASHINGTON AND JEFFERSON COLLEGE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED JULY 25, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 471.

FRANCIS J. COLLIER, DAVID C. HOUSTON, WILLIAM JEFFREY, JOHN T. PRESSLY, AND JOHN HAYS, PLAINTIFFS IN ERROR,

vs.

WASHINGTON AND JEFFERSON COLLEGE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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1 *Docket entries.*

In the supreme court of Pennsylvania in and for the western district, No. 165, Oct. & Nov. term, 1869.

FRANCIS J. COLLIER, WILLIAM JEFFREY ET AL.
versus
WASHINGTON AND JEFFERSON COLLEGE. } Bill in equity.

Bill in equity filed Aug. 24, 1869. Same day, motion by complainants, by their solicitor, Geo. Shiras, jr., before Mr. Justice Agnew, for preliminary injunction, and that an early day be fixed for a hearing, with refusal of the judge to fix a day, filed. September 4, 1869, acceptance by defendants of service of bill filed. October 4, 1869, answer filed.
2 October 12, 1869, precipe to set down case for argument on bill and answer filed. November 24, 1869, cause argued. January 3, 1870, bill dismissed at costs of the complainants. Per curiam, opinion by Mr. Chief Justice Thompson. April 30, 1870, writ of error from U. S. Sup. Court, with complainants' petition & allocation, bond, citation, and acceptance of service, filed. Eo die record sent up.

A true copy of the docket entries in above case. Attest my hand and official seal at Pittsburgh, western district of Penn'a, Ap'l 30, 1870.

[SEAL.] THO'S J. KEENAN,
Pro. Sup. Ct. of Penn'a, W. D.

3 In the supreme court of Pennsylvania, western district, No. , October and November term, 1869.

FRANCIS J. COLLIER, WILLIAM JEFFERY and others,
vs.
WASHINGTON AND JEFFERSON COLLEGE.

To the honorable the judges of the supreme court, sitting in equity:

Francis J. Collier, David C. Houston, William Jeffery, John T. Pressly, John Hays, bring this their bill of complaint against Washington and Jefferson College, and thereupon the complainants aver:

1. That the institution of learning commonly known as Jefferson College was incorporated by an act of assembly approved the 15th day of January, 1802, entitled "An act for the establishment of a college at Canonsburg, in the county of Washington, in the Commonwealth of Pennsylvania," a true copy whereof is hereto appended.

2. That the said Jefferson College was duly organized under the provisions of said act, and accumulated from time to time a large amount of money and property, amounting in value, in the aggregate, to 150 thousand dollars; that the board of trustees of said college became recipients of a large amount of funds, to wit, not less than thousand dollars, donated and bequeathed by benevolent persons for the specific purpose of educating poor and pious young men fer the gospel ministry; that the said board of trustees put into operation, about January 1st, 1863, a plan of endowment, whereby, for certain sums of money to be paid by subscribers to the plan, scholarships were granted by the said college, of which not less than fifteen hundred were sold, of which some twelve hundred are still outstanding; that many of these scholarships

were sold by the said college to persons resident in or near Canonsburg, in the county of Washington, who were induced to purchase said scholarships because thereby the said college contracted and agreed to furnish tuition to the beneficiaries of said scholarships at Canonsburg, in the county of Washington, as appears in and by the certificates of said scholarship, a true copy whereof is hereto appended.

3. That on the 4th day of March, 1865, the general assembly passed, and the governor approved, an act entitled "An act to unite the colleges of Jefferson and Washington, in the county of Washington, and to erect the same into one corporation by the name of Washington and Jefferson College," a true copy whereof is hereto appended; that the said act was duly accepted by the said Jefferson College and Washington College, and a new organization was effected in pursuance of its provisions; that by said act it was enacted that buildings and property of said Jefferson College should remain at Canonsburg, in the county of Washington, and that the senior, junior, and sophomore classes should pursue their studies there, and that all the liabilities of said Jefferson College, including the scholarships theretofore granted, were imposed upon and declared to be assumed by the new corporation.

4 4. That the said act of March 4th, 1865, was accepted by Jefferson College upon the strength of the said provisions of said act retaining the college buildings and said classes at Canonsburg, and upon the faith that all the obligations then devolving upon said Jefferson College would be fully met and performed by the new corporation, to be known as Washington and Jefferson College.

5. That these complainants are informed and believe that the said Washington and Jefferson College, in utter disregard of the terms of said act of 1865, are about to dispose of the said college building situate in Canonsburg, and are about to wholly remove the college property and classes from Canonsburg; that said defendants justify their declared intention to remove said college, its classes, and property from Canonsburg, by alleging the terms of a certain act of assembly, approved the 26th day of February, 1869, whereby it is claimed that they are authorized, by a vote to that end by two-thirds of the board of trustees, to remove said college and its classes and property from Canonsburg to Washington, or elsewhere; that a true copy of said act of February 26th, 1869, is hereto appended.

6. That the said act of March 4th, 1865, providing for the continued maintenance of Jefferson College, and of the senior, junior, and sophomore classes at Canonsburg, and the acceptance thereof, and the organization under its provisions, constituted a contract between the parties thereto; that the said scholarships, wherein the said Jefferson College agreed to give tuition in Canonsburg, in the county of Washington, constituted contracts between said Jefferson College and the proprietors of said scholarships; and by said act of March 4th, 1865, it was made the express duty of the new corporation thereby created to fulfil and carry out the said contracts and obligations.

7. That the said act of February 26th, 1869, is invalid and unconstitutional, because it directs the removal of the college buildings and classes from Canonsburg without the consent of those holding scholarships as aforesaid, and of those who have donated funds for the specific purpose of educating young men at Canonsburg, thereby impairing the obligation of subsisting contracts; that said act of February 26th, 1869, is therefore repugnant to the 17th section of article 9th of the constitution of Pennsylvania, and to the 10th section of the Constitution of the United States.

8. That these complainants, as members of the boards of trustees of Washington and Jefferson, mindful of the duties and obligations devolved upon them by the said act of March 4th, 1865, have opposed, by argument and by their votes as members of said board, the removal of the college buildings, classes, and property from Canonsburg, in the county of Washington; but that the majority of said board are about to remove said college property and classes aforesaid from Canonsburg to Washington, a village seven miles distant from Canonsburg; that these complainants hence need equitable relief as follows:

1. That the said act of February 26th, 1869, be declared inoperative, null, and void; as repugnant to the 17th section of article 9th of the constitution of Pennsylvania, and to section 10th of the Constitution of the United States.

2. That now, by a preliminary and hereafter by a final injunction, the said defendants, and each and all of them, be enjoined and restrained from removing, or causing to be removed, the said college, its property, and classes, from Canonsburg to Washington, or elsewhere.

3. Such other and further relief as to your honors shall seem meet, and as the exigencies of their case may require.

(Signed) F. J. COLLIER.
WILLIAM JEFFERY.
DAVID C. HOUSTON.

JAMES VEECH,
GEO. SHIRAS, JR.,
BOYD CRUMRINE,
Solicitors for Complainants.

5 *Act of January* 15, 1802.

An act for the establishment of a college at Canonsburg, in the county of Washington, in the Commonwealth of Pennsylvania.

Whereas the establishment of a college at Canonsburg, in the county of Washington, for the instruction of youth in the learned languages, in the arts and sciences, and in useful literature, would tend to diffuse information and promote the public good: Therefore,

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same,* That there be erected, and hereby is erected and established, in Canonsburg, in the county of Washington, in this commonwealth, a college for the education of youth in the learned languages, the arts, sciences, and useful literature. The style, name, and title of said college, and the constitution thereof, shall be, and are hereby declared to be, as is hereinafter mentioned and defined, that is to say: the said college shall be under the management, direction, and government of a number of trustees, not exceeding twenty-one; and the first trustees of the said college shall consist of the following persons, to wit: Revs. John M'Millan, Joseph Patterson, Thomas Marquis, Samuel Ralston, John Black, James Powers, James Dunlap and John M'Pharrin, James Edgar, John M'Dowell, James Allison, William Findley, Craig Ritchie, John Hamilton, Joseph Vance, Robert Mahon, James Kerr, Aaron Lyle, Alexander Cooke, John Mercer, and William Hughes, esqs.

SECTION 2. *And be it further enacted by the authority aforesaid,* That the said trustees and their successors, to be elected in the man-
6 ner hereinafter mentioned, shall forever hereafter be, and they are hereby, erected, established, and declared to be one body

politic and corporate, with perpetual succession, in deed and in law, to all intents and purposes whatsoever, by the name, style, and title of "The Trustees of Jefferson College, in Canonsburg, in the county of Washington," by which name and title they, the said trustees and their successors, shall be competent and capable at law and in equity to take to themselves and their successors, for the use of the said college, any estate in any messuages, lands, tenements, hereditaments, goods, chattels, moneys, or other effects, by the gift, grant, bargain, sale, conveyance, assurance, will, devise, or bequest of any person or persons whomsoever or wheresoever: *Provided*, The same do not exceed in the whole the yearly value of five thousand dollars, and the same messuages, lands, tenements, hereditaments, and estate, real and personal, to grant, bargain, sell, convey, assure, devise, and to farm-let, and to place out on interest, or otherwise dispose of, for the benefit of the said college, in such manner as to them, or a majority of them, shall seem most beneficial for the institution; and to receive the rents, issues, profits, incomes, and interests thereof, and to apply the same to the proper use and support of the said college; and by the same name to sue, prosecute, and defend, implead and be impleaded, in any court or courts of law or equity, and in all manner of suits or actions whatsoever, and generally, by and in the same name, to do and transact all and every the business touching or concerning the premises, as fully and effectually as any natural person or body politic or corporate within this commonwealth may or can do; and to hold, enjoy, and exercise all such powers, authorities, and jurisdictions as are customary in other colleges in the United States of America.

SECTION 3. *And be it further enacted by the authority aforesaid*, That there shall be a meeting of the said trustees at least once in every year, at the town of Canonsburg, at such time as the said trustees, or a majority of them, shall appoint, of which notice shall be given, either by public advertisement in one of the public newspapers of the town of Washington, in the county of Washington, four weeks before such meeting, or by notice in writing, signed by the clerk or other officer whom the said trustees for that purpose may appoint, and to be left at the dwelling-house of each trustee at least ten days before the
7 time of such intended meeting; and, if at such meeting eleven of the said trustees shall not be present, those present shall have power to adjourn the meeting to any other day as fully and effectually, to all intents and purposes, as if the whole number of trustees for the time being were present; but if eleven or more of the said trustees shall meet at the said appointed time, or at any other time of adjournment, then such number so met shall be a board or quorum, and a majority of them shall be capable of doing or transacting all the business and concerns of said college not otherwise provided for by this act, and particularly of making and enacting ordinances for the government of said college; of filling vacancies in the board of trustees occasioned by death, resignation, or otherwise; of electing and appointing the principal and professors of said college; of agreeing with them for their salaries and stipends, and removing them for misconduct or breach of the laws of the institution; of appointing committees of their own body to carry into execution all and every the resolutions of the board; of appointing a treasurer, secretary, stewards, managers, and other necessary and customary officers for the taking care of the estate and managing the concerns of the corporation; and a majority of the board or quorum of the said trustees, at any annual or adjourned meeting, after notice given as aforesaid, shall determine all matters and things (al-

though the same be not particularly herein mentioned) which shall occasionally arise and be incidentally necessary to be determined and transacted by the said trustees: *Provided always*, That no ordinances shall be of force which shall be repugnant to the laws of the United States or of this State.

SECTION 4. *And be it further enacted by the authority aforesaid*, That the head or chief master of the college shall be called and styled the principal of the college, and the masters thereof shall be called and styled professors; but neither principal nor professors, while they remain such, shall ever be capable of holding the office of trustee. The principal and professors, or a majority of them, shall be called and styled the faculty of the college, which faculty shall have the power of enforcing the rules and regulations adopted by the trustees for the government of the pupils by rewarding and censuring them, and, finally, by suspending such of them as after repeated admonitions shall continue refractory, until the determination of a quorum of trustees can be
8 had; and of granting and confirming, by and with the approbation and consent of a board of the trustees, signified by their mandamus, such degrees in the liberal arts and sciences, to such pupils of the college, or others, as by their proficiency in learning or meritorious conduct they shall think entitled to them, as are usually granted and conferred in other colleges in the United States of America; and to grant to such graduates diplomas or certificates under their common seal, and signed by the faculty; all persons, of every religious denomination, shall be capable of being elected trustee, nor shall any person, either as principal, professor, or pupil, be refused admittance for his conscientious persuasion in matters of religion: *Provided*, He shall demean himself in a sober, orderly manner, and conform to the rules and regulations of the college.

SECTION 5. *And be it further enacted by the authority aforesaid*, That whenever a vacancy shall happen, occasioned by disqualification, resignation, or decease of any clergyman hereby appointed a trustee, such vacancy shall be filled by the choice of another clergyman of any Christian denomination, and so as often as such vacancy shall happen, whereby the number of eight clergymen hereby appointed trustees shall never be lessened nor augmented; nor shall any misnomer of said corporation defeat or annul any gift, grant, devise, or bequest to or for the use of the said corporation: *Provided*, The intent of the parties shall sufficiently appear upon the face of the gift, grant, will, or other writing, whereby any estate or interest was intended to pass to or from the said corporation; nor shall any dis-user or non-user of the rights, liberties, privileges, jurisdictions, and authorities hereby granted to the said corporation, or any of them, create or cause a forfeiture thereof; and the constitution of the said college herein and hereby declared and established shall be and remain the inviolable constitution of the said college forever; and the same shall not be altered or alterable by any ordinance or law of the said trustees, nor in any other manner than by an act of the legislature of the commonwealth.

SECTION 6. *And be it further enacted by the authority aforesaid*, That the said trustees shall cause to be made for their use one common seal, with such devices and inscriptions thereon as they shall think
9 proper, under and by which all deeds, diplomas, certificates, and acts of the said corporation shall pass and be authenticated, and the same seal, at their pleasure, from time to time change and alter. The business of the said corporation shall and may be transacted and performed by the majority of a meeting of at least eleven of the trustees

appointed by this act, and their successors, duly elected, notified, called, and convened as aforesaid, and not otherwise. If any trustee shall accept or take any charge or office under the said trustees, other than that of treasurer or secretary, his place shall thereby be vacated, and the trustees at their next meeting shall proceed to supply such vacancy by election.

SECTION 7. *And be it further enacted by the authority aforesaid*, That from and after the passing of this act all the property belonging to Canonsburg Academy, of whatsoever nature the same may be, whether real, personal, or mixed, which hath been given, conveyed, devised, or bequeathed to the trustees for the benefit and use of that institution, shall be vested, and hereby is vested, in the trustees of the college aforesaid and their successors in office, subject always, nevertheless, to the uses, trusts, ends, and purposes for which the same property was originally given, conveyed, devised, or bequeathed.

SECTION 8. *And be it further enacted by the authority aforesaid*, That the trustees hereinbefore appointed, and their successors, the principal and professors, and every of them, now appointed or hereafter to be appointed, in the manner and form hereinbefore directed and required, before they enter upon the duties of their offices, shall, before some one judge of the court of common pleas, or before some justice of the peace of the county of Washington, take and subscribe the oath or affirmation as directed by the eighth article of the constitution of this commonwealth, and the act of Congress of the United States passed the first day of June, one thousand seven hundred and eighty-nine; and the trustees are hereby enjoined and required to provide and keep a book wherein their secretary shall well and truly record the certificates of the aforesaid qualifications.

10 *Act of March* 4, 1865.

An act to unite the colleges of Jefferson and Washington, in the county of Washington, and to erect the same into one corporation, under the name of Washington and Jefferson College.

Whereas, by reason of the multiplication of incorporated seminaries of learning in this State and in adjoining States, and of the enlarged and growing demand for the highest attainable excellence in such institutions, the close proximity of the two colleges of Jefferson, at Canonsburg, and of Washington, at Washington, in the county of Washington has been found to impede the advance of education, and to discourage the friends and patrons of those colleges in their efforts to sustain and endow them:

And whereas, for these and other good and sufficient considerations, the trustees of those colleges have agreed upon a union thereof, and have besought this general assembly to give thereto the sanction and aid of a legislative enactment: Therefore,

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same*, That the colleges of Jefferson, at Canonsburg, incorporated by an act of assembly approved the fifteenth day of January, anno Domini one thousand eight hundred and two, and of Washington, at Washington, incorporated by an act of assembly approved the twenty-eighth day of March, anno Domini one thousand eight hundred and six, shall hereafter be one corporation in fact and in law under the name of Washington and Jefferson College; which corporation, by said name, shall possess and enjoy all the

capacities, powers, privileges, immunities, and franchises which were conferred upon and held by said colleges of Jefferson and Washington, and the trustees thereof, with such enlargements, and subject to such changes therein as are made by this act.

11 SECTION 2. That all the real and personal property, of every nature and kind whatsoever, now held and possessed by, or in trust for, said colleges or corporations of Jefferson and Washington, severally, with all endowment funds, choses in action, stocks, bequests, and devises, and other rights whatever to them and each of them belonging or in any wise pertaining, are hereby transferred to and vested in the corporation hereby created; and all the several liabilities of said two colleges or corporations, by either of them suffered or created, including the scholarships heretofore granted by, and now obligatory upon, each of them, are hereby imposed upon and declared to be assumed by the corporation hereby created, which shall discharge and perform the same without diminution or abatement.

SECTION 3. That the objects of said corporation shall be the cultivation and advancement of literature and science, and of morality and religion, without regard to sect or creed, by the education of youth of the male sex in classical learning, including ancient and modern languages, in mental and moral philosophy, and in the useful arts and sciences, and to promote and encourage high attainments therein, and in the learned professions, by conferring upon those found worthy thereof the degrees of merit and honor heretofore known and conferred, or which may hereafter be adopted and conferred, by like institutions in any of the United States of America.

SECTION 4. That the said corporation shall consist of a board of trustees of thirty-one persons, all of whom shall be citizens of the United States of America, and at least sixteen thereof shall be also citizens of this commonwealth; they shall be chosen and have perpetual succession in the manner following, to wit: within thirty days after the passage of this act the present board of trustees of each of said colleges of Jefferson and Washington shall meet at some convenient place, upon ten days' notice, and choose fifteen persons, duly qualified, at least eight of whom shall be citizens of this commonwealth, to be trustees of the college hereby erected, of which election a record shall be made, and a copy thereof, duly certified, and with the corporate seal thereto affixed, shall be transmitted to the first meeting of the new board, to be by them filed and recorded; thereupon the secretaries of said meeting shall cause notices to be given, by mail and by

12 publications in one or more newspapers published in the county of Washington, and in the city of Pittsburgh, to and of the persons so chosen, and designating a convenient place and day, within twenty days thereafter, for the first meeting and organization of the new board, and for the transaction of such other business as shall pertain to the establishment and interests of the new college hereby erected.

SECTION 5. That upon the assembling, at the time and place appointed, of at least a majority of the thirty persons so chosen, (or if a majority do not then and there convene, then upon such majority convening on some other day, to which a less number assembled may adjourn, at the same or some other place,) they shall, after having taken and subscribed the oath or affirmation hereinafter prescribed, choose one of their number to be president of the board, and another thereof to be secretary; thereupon they shall choose some other citizen of the United States, not a resident of the county of Washington, to be

the thirty-first trustee, and transact whatever other business relating to the college they may deem to be required of them; all vacancies occurring thereafter in the board shall be filled by the concurrent vote of a majority of the members present at any stated meeting duly convened and constituted; but the existence of one or more vacancies in the membership shall not invalidate any act of the board which shall be otherwise lawful and regular; at all subsequent meetings of the board, any number not less than ten shall be a quorum competent for the transaction of any business, by the concurrent vote of a majority of the members present.

SECTION 6. That, before entering upon the discharge of any official duty, each of the trustees of said college shall take and subscribe in a book an oath or affirmation that he will, according to the best of his knowledge and ability, while holding the office of trustee, be true and loyal to the interests of Washington and Jefferson College, and to the constitution and government of the United States of America and of the State of Pennsylvania; at the first meeting of the board said oath or affirmation shall be administered by some judge or justice of the peace to the members then in attendance; thereafter the same may be administered by the president or any other duly qualified member of the board.

SECTION 7. That stated meetings of the board of trustees shall be held at least once in each year, at such times as the board shall
12 by standing rule appoint, which meetings may be adjourned from time to time, and from place to place; special meetings may be held at such other times as occasion may require, upon call by the president or any three members; at least ten days' notice previous thereto shall be given of all meetings, in such manner as the board shall by standing rule prescribe, and all meetings shall be held in some of the college buildings to be designated, unless otherwise specially ordered; but no business shall be transacted at any special or called meeting other than such as shall pertain to the object or objects thereof, as made known by the call.

SECTION 8. That all the property, funds, and interests of the corporation and college shall be under the care, control, and management of the board of trustees, who may from time to time commit the collection, keeping, and disbursement thereof to such committees, officers, and agents as they shall deem requisite and proper, prescribing to them, severally, by standing rules or otherwise, their powers and duties; at least once in every year a detailed account or accounts of the receipts and disbursements of the corporation or college funds, and of the amount, management, and condition of all the property and rights of the corporation shall be submitted by the proper officers and agents to the board of trustees, which, after examination and correction, if necessary, and approval, shall be entered upon the minutes at length, or in such part or parts as shall be ordered.

SECTION 9. That the board of trustees shall, from time to time, as required, appoint a president and a vice-president of said college, and such other professors or instructors therein, and of the departments thereto pertaining, as they shall deem necessary and proper, each of whom shall be a citizen of the United States of America; they shall hold their places at the will of the board, and shall receive for their services such salaries or compensation and emoluments as the board may from time to time determine, or as may be agreed on.

SECTION 10. That the course of instruction and studies to be pursued in said college shall be such as to conform to its objects, as declared in the third section of this act, and shall be divided into four periods

or classes, denominated the freshman, sophomore, junior, and senior classes, each to comprise such studies as are pursued in the best
14 colleges in the United States, and as the president, vice-president, and professors shall from time to time prescribe, with the approval of the board of trustees, which course of studies shall extend not less than three nor more than four years: *Provided, however*, That students who have previously pursued any of the studies of those classes may be graduated at the end of a shorter period, and students found to be deficient may be required to remain for a longer period.

SECTION 11. That in addition to the aforesaid collegiate periods or classes, and the studies appropriate thereto, there shall be as integral parts of said college a scientific department and a preparatory department. The scientific department shall be such as to afford facilities for instruction in the higher branches of the English education, and in such of the modern foreign languages as are most useful and common, in natural sciences, belles-lettres, mathematics, civil and military engineering, and the mechanic arts, so as to qualify students therein for the various business avocations of life; and the degree of S. B. shall be conferred upon the graduates of said department, although they may not have pursued such a course of study in the college as to entitle them to any other degree. The preparatory department shall be of high grade, and shall include such studies as will qualify those seeking instruction therein for admission to the freshman class of the college, or to the scientific department.

SECTION 12. That there shall also be established in connection with, and as a part of, said college an institution to be known as the department of agriculture and art, the leading object of which shall be to teach such branches of learning as are related to agriculture and the mechanic arts: *Provided*, An adequate fund for the establishment and endowment thereof shall be obtained from the State of Pennsylvania, or otherwise, and graduates therein shall have conferred upon them a suitable degree.

SECTION 13. That the studies of the senior, junior, and sophomore classes of said college shall be pursued at or near Canonsburg, in the county of Washington, and those of the freshman class, and of the scientific and preparatory departments, and of the department of agriculture and art, at or near Washington, in said county; and, in appropriating the income derived from the endowment funds of said corporation, a sum equal to at least one-third, and not exceeding one-
15 half part thereof, shall be exclusively devoted and applied by the board of trustees to the use, support, and benefit of the class and departments at or near Washington in addition to the income which may be derived from the fund or funds pertaining to the department of agriculture and art, which shall be wholly and inviolably appropriated thereto: *Provided, however*, That nothing herein contained shall be construed so as to divert any gift, grant, devise, or bequest, or the income or profits thereof, from the specific departments, professorships, studies, or classes intended according to the true intent and meaning of the deed, last will and testament, or other writing giving or founding the same.

SECTION 14. That the president and vice-president of the college, besides doing the duties pertaining to their offices as such, shall each be a professor of, and give instruction in, such studies as shall be committed to him by the board of trustees. The president and the professors of the studies of the senior, junior, and sophomore classes shall be charged with the instruction, government, and discipline of the students in those classes, and the vice-president and professors or instructors in

the studies of the freshman class, and of the departments aforesaid, shall be charged with the instruction, government, and discipline of the students or pupils therein, subject in all cases to the direction and control of the board of trustees; the president shall also have the general charge and supervision of all the classes and departments, and may, as often as occasion shall require, take to his counsel and assistance, in matters of study, government, and discipline, the vice-president and any or all of the professors; suspensions or expulsions from the college, or any of its privileges or departments, shall be subject to the revision, modification, or reversal of the board of trustees; and no person shall be excluded therefrom on account of the religious sect or denomination to which he belongs or adheres, provided he shall demean himself in a sober, orderly manner, and conform to the lawful rules and regulations of the college.

SECTION 15. That the president and vice-president and professors of the college and its departments shall be known as the faculty. All diplomas or certificates of degree which to students shall be
16 awarded, upon examination and approval by the board of trustees, or a committee thereof, shall be signed by the faculty, and have the common seal of the corporation thereto affixed.

SECTION 16. That the said corporation shall have the right to hold, free from taxes, State or municipal, such lots or parcels of land as may be needful and convenient for buildings for the college, and for residences for the president, vice-president, and professors, with the appurtenances: *Provided*, The same shall be so used, and shall not in the aggregate exceed twenty acres; and should the department of agriculture and art aforesaid be established, then an additional quantity, not exceeding two hundred acres, if used therefor, shall be in like manner free from taxation.

SECTION 17. That no gift, grant, devise, or bequest to or for the use of said corporation or college, or any department or part thereof, shall be adjudged to be null and void, or fail to have effect, by reason of any misnomer thereof in the deed, will, or other writing giving or granting the same, provided the intent of the donor, grantor, or testator shall sufficiently appear by the same or some other writing duly authenticated, nor shall any such gift, grant, devise, or bequest be declared void because the deed, last will, or other writing conveying, giving, or confirming the same was not made more than one calendar month before the death of the donor, grantor, or testator, and no non-user or unintentional mis-user of the corporate powers and franchises conferred by this act, or any of them, shall work a forfeiture thereof.

SECTION 18. That from and after the organization of the corporation hereby created, as herein provided, the colleges of Jefferson and Washington, named in the first section of this act, shall be dissolved, except so far as may be found necessary to enable them to close up their business affairs, and to perfect the transfer of their property and rights to the corporation by this act created.

17 *Act of February 26, 1869.*

A supplement to "An act to unite the colleges of Jefferson and Washington, in the county of Washington, and to erect the same into one corporation, under the name of Washington and Jefferson College," approved the fourth day of March, anno Domini one thousand eight hundred and sixty-five.

SECTION 1. *Be it enacted by the senate and house of representatives of*

the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same, That as soon as the necessary preliminary arrangements can be made, and suitable buildings provided, the several departments of Washington and Jefferson colleges shall be closely united and located either at Canonsburg, Washington, or some other suitable place within this commonwealth, to be selected and fixed in the manner hereinafter specified.

SECTION 2. The location of the college shall be determined by the board of trustees, by a vote of not less than two-thirds of the members present at a regular meeting, or at a special meeting called for that purpose, if they can agree; and if they cannot agree within sixty days after the passage of this act, the question of location shall be referred to a commission of five gentlemen, who shall visit Canonsburg and Washington, and such other places as they may deem advisable, inquire into the condition and value of the college property, receive offers of donations and contributions to the college, hear those who may be interested and desire to say anything on the question submitted to them, and, after obtaining all necessary information within their reach, and taking into consideration all the advantages and disadvantages of each locality, and everything that may have a bearing upon the future prosperity and welfare of the college and the advancement of liberal education, they, or any four of them, shall report to the board of trustees in writing where, in their judgment, the united college shall be located; and there-
18 upon the board of trustees shall proceed with as little delay as possible to carry into effect their recommendation. In determining, or endeavoring to determine, the location of the college, the board of trustees shall proceed in the same manner and consider the same matters as above provided for in the case of the commission.

SECTION 3. The commission, if resorted to, shall be chosen by the board of trustees, but a vote of two-thirds of the members present at a regular meeting, or at a special meeting called for that purpose, shall be necessary to a choice; and at the same time five alternates shall in like manner be chosen to supply the places of any who may decline to *severe;* said alternates to be called on in the order in which their names may stand on the list, as arranged by the board; and in case a vacancy occurs in said commission by resignation or otherwise, the board of trustees shall fill the same without delay, by selecting a principal and alternate in the manner above specified.

SECTION 4. A committee of three, consisting of the president of the board, one member of the board from Canonsburg or vicinity, and one from Washington or vicinity, to be appointed by the president of the board, shall, as far as may be convenient, attend the meetings of the commission, and assist them in obtaining such information as may be desired. The expense of the commission shall be paid by the treasurer of the college, upon the order of said committee.

SECTION 5. If the united college is located at Canonsburg, it shall be the duty of the board of trustees to designate and set apart sufficient real estate of the college in Washington, for the use of an academy, normal school, or other institution of lower grade than a college, to be located there, and managed by a board of seven directors, to be selected by said trustees; which directors so selected shall have power to fill vacancies in their number. And if the college shall be located at Washington, it shall be the duty of said trustees to designate and set apart sufficient real estate of the college in Canonsburg, for the use of an academy, normal school, or other institution of lower grade than a college, to be located there, and managed by a similar board, similarly chosen;

and, in addition thereto, the said trustees are hereby authorized to appropriate personal property of the college, consisting of libraries, apparatus, and furniture now connected with that department of
19 the college for the use of such academy, normal school, or other institution of lower grade than a college; and in the event of the removal of the college from both places where it is now located, the provisions of this section shall be taken and held to apply to each of said localities.

SECTION 6. It shall be lawful for any incorporated college or institution of learning within this commonwealth to unite with Washington and Jefferson College, and consolidate their property funds for educational purposes on such terms and conditions as may be agreed upon.

20 $ No.

Endowment funds of Jefferson College, Pennsylvania.

This certifies that has paid dollars, which entitles h to the privilege of a scholarship, as specified in the plan of endowment adopted by the trustees of Jefferson College, in Canonsburg, in the county of Washington, transferable only on the books of the college, personally or by attorney, on presentation of this certificate. Witness the seal of the corporation and the signatures of the president and secretary thereof, at Canonsburg,
[SEAL.] the day of , A. D. one thousand eight hundred and fifty- .

, *President.*
, *Secretary.*

21 Personally before me came John Hays, one of the above complainants, who, being duly sworn, deposes and says that he has read the foregoing bill of complaint; that the allegations therein, so far as they contain matters within his own knowledge, are true, and so far as they contain matters on information and belief he believes them to be true.

JOHN HAYS.

Sworn and subscribed Aug. 23, 1869.
Coram— THO'S J. KEENAN,
Pro. S. C. W. D.

(Indorsed:) Supreme court of Penn'a, western district. No. 165. Oct. and Nov. term, 1869. Francis J. Collier, William Jefferey, and others vs. Washington and Jefferson College. To the defendants: You are hereby notified that unless an appearance be entered on your behalf in the above case within fourteen days a decree on said *said* bill will be taken pro confesso. See reg. James Veech, Geo. Shiras, jr., Boyd Crumrine, solicitors for complainants. Sept. 1, 1869, service accepted and proth'y will enter our appearance, McKennan & Wilson, solicitors.

22 *Motion for injunction.*

Supreme court of Penn'a, west'n dist.

DAVID C. HOUSTON ET AL.
vs.
WASHINGTON & JEFFERSON COLLEGE ET AL. } No. 163.—Oct. & Nov. T., 1869.

F. H. COLLIER AND OTHERS
vs.
WASHINGTON & JEFFERSON COLLEGE.
No. 165.—Oct. & Nov. T., 1869.

THE TRUSTEES OF JEFFERSON COLLEGE AT CANNONSBURGH, in the county of Washington,
vs.
WASHINGTON & JEFFERSON COLLEGE.
No. 164.—Oct. & Nov. T., 1869.

And now, to wit, Aug. 24, 1869, came the complainants in the above cases, by Geo. Shiras, jr., their solicitor, and move, before Justice Agnew, for a preliminary injunction in each of said causes, as prayed for in the bills of complaint, and ask that an early day be fixed for a hearing.

Whereupon the said justice declines to assign a day for a hearing, on the ground that he cannot exercise the powers of the court in vacation in such a case.

DANIEL AGNEW.

AUG. 24, 1869.

23 *Answer.*

In the supreme court of Pennsylvania, sitting in equity, western district, No. , October and November term, 1869.

BETWEEN FRANCIS J. COLLIER, DAVID C. HOUSTON, William Jefferey, John T. Pressley, and John Hays, plaintiffs,
and
WASHINGTON AND JEFFERSON COLLEGE, DEFENDANT.

To the honorable the judges of the said court:

1. The allegations made in the first section of the bill are true.

2. The defendant admits that Jefferson College was duly organized under the provisions of the said act, and did accumulate, by benefactions from the commonwealth and otherwise, a large amount of money and property, but not to so large a value as claimed by the complainants.

The defendant believes it to be true that "The Board of Trustees of Jefferson College" became recipients of funds donated and bequeathed by benevolent persons; but whether for the specific purpose mentioned in the bill, the defendant does not know and cannot state.

The defendant admits that the said board of trustees devised and put into operation a plan of endowment as mentioned in the second passage of the bill, but denies that the scholarships issued in pursuance of the said plan entitled the holders to tuition at Canonsburg only. The defendant also admits that the exhibit attached to the said bill is a correct copy of the form of the scholarship certificates.

24 The defendant admits the sale of many of such scholarships to persons resident in or near Canonsburg, but what the motives or inducements of the purchasers were the defendant is not informed, makes no admission in reference thereto.

3 and 4. The defendant admits it to be true that on March 4, 1865, the general assembly passed, and the governor approved, the act to which reference is made in the third section of the bill, and the copy of it attached to the bill is a true copy, and that the said act was duly ac-

cepted by "The Trustees of Jefferson College, in Canonsburg, in the county of Washington," and "The Trustees of Washington College, in the town of Washington," on or about March 29, 1865, and, as directed by the said law, carried into effect the union of the said colleges, and provided for the organization of the said College of Washington and Jefferson.

5 and 6. The defendant admits the passage of the act of February 26, 1869, and that the copy thereof attached to the bill is correct and true, which act was duly accepted by Washington and Jefferson College on the twentieth day of April, 1869, and, according to its directions, the board of trustees thereof, by a vote of not less than two-thirds of the members present at a special meeting called for that purpose on the said twentieth day of April, 1869, fixed and determined the location of the college at Washington.

The board of trustees of Washington and Jefferson College, at their meeting on the ninth day of June, 1869, resolved to bring together at Washington all the college classes in pursuance of the act of February 26, 1869, and the previous action of the board locating the institution there; that, accordingly, at that meeting, and at their subsequent meeting on August 4, 1869, they made appropriate and complete arrangements for the organization and conduct of the said institution, and the instruction and discipline of all the college classes at Washington; and that they made no provision whatever for the conduct of any department of the said college at Canonsburg thereafter. This respondent has not removed any part of the college library and apparatus from Canonsburg, and has not disposed of the several college buildings situated therein, or any of them, but intends to dispose of and devote the same in strict conformity with the provisions of the said act of assembly of February 26, 1869, whenever it may lawfully do so; and to furnish to the complainants and all other holders of scholarships all the advantages of collegiate instruction in the institution thus concentrated at Washington, according to the lawful tenor of the certificates of scholarship.

7. The defendant denies that the said act of February 26, 1869, is invalid and unconstitutional for the reasons alleged by the said complainants, or for any other reason.

8. The defendant denies that either William Jeffrey or John T. Pressley voted against the concentration of the college at Washington, under the act of February 26, 1869. The other complainants did vote against the removal of the classes, &c., from Canonsburg to Washinging, but voted, as the defendant is informed and believes, for the removal of the Washington department to Canonsburg, and the concentration of the whole college there, against, as they now claim, the tenor and mandate of the act of March 4, 1865. The residue of this section of the bill has been already answered in the response to the fifth and sixth paragraphs.

Further answering, the defendant answers and says:

9. Jefferson College was incorporated in 1802, and Washington College was incorporated in 1806. They were established respectively at Canonsburg and Washington, seven miles distant from each other. From time to time, covering the period from 1807 to 1865, efforts were made by the friends of education and the patrons of the colleges for their consolidation. These efforts proved abortive, mainly owing to the influence of local interests and jealousies. On September 27, 1864, a large convention of the joint alumni met at the city of Pittsburgh, and adopted earnest resolutions calling imperatively on the boards of trustees to

unite the institutions. The defendant hereto attaches a copy of the proceedings of the said convention, as see Exhibit A, (page .) In deference .to this demand of the alumni and public sentiment expressed in a variety of ways, and their own convictions, and the offer of fifty thousand dollars to that end by the Rev. Dr. Beatty, of Steubenville, on the condition of the union, the two boards besought the general assembly for the passage of the act of March 4, 1865. This law was duly accepted by both the old corporations, and on or about April 12, 1865, the College of Washington and Jefferson was organized in pursuance of that law, and from thenceforth until after the passage of the act of February 26, 1869, Washington and Jefferson College was carried on under the charter of 1865.

26 The experience of several years having demonstrated that the workings of the said corporation were radically imperfect, the board of trustees appointed a committee to report on the endowment and the defects in the organization of the college, which committee made their report on April 8, 1868, a copy whereof is hereto annexed as Exhibit B, (page .) In accordance with the recommendation of the said committee, the board of trustees appointed Messrs. Sterrett, Veech, Sherrard, Acheson, McDaniel, and McMillan a committee to devise and report to the board at its next meeting a remedy for the existing defects of organization, alleged by the former committee to be inherent in the subsisting plan. At the next regular meeting of the board, on August 5, 1868, the committee so appointed made their report, a copy whereof is hereto attached as Exhibit C, (page ,) wherein the outlines of the plan evidenced by the act of February 26, 1869, were presented to and approved by the board with entire unanimity, and Messrs. Sterrett and Veech were appointed a committee to draft the necessary law.

The occasion of this meeting of the board was the annual commencement of the college at Canonsburg. A large number of the alumni of both the old colleges was there assembled, and adopted resolutions urging the immediate and complete consolidation of the several departments of the college at one place, which were formally presented to the board by a committee of the alumni association appointed for that purpose, a copy whereof is hereunto annexed marked Exhibit D, (page .)

The committee of the board appointed August 5, 1868, made their report to the board at a meeting held January 19, 1869, recommending a supplement to the charter in the words of the act of February 26, 1869, with the single exception that the supplement as drawn by the committee authorized the college to be located anywhere, whereas the bill as passed by the legislature limited the location to the commonwealth. Such report of the committee was accepted and approved by the board without a dissenting vote, twenty-five out of the thirty-one members composing the board being present at the meeting, and a committee was appointed to visit Harrisburg and procure the passage of the law.

The legislation was obtained, was accepted by the board, and the college located at Washington in pursuance of the authority of that

27 law, as is already shown by this answer, and more effective and extensive appliances provided for collegiate education at Washington commensurate with the augmented means of the institution. These were supplied by the subscription of fifty thousand dollars by the citizens of Washington and vicinity, made upon the sole condition that the college should be concentrated there, and by the saving of outlay necessarily caused by the maintenance of the institution as it was organized before.

The system of cheap scholarships devised by Jefferson College, as

stated in the bill, was adopted under the pressure of a want of adequate means to carry on the college at that time. The net endowment of that institution in 1865, from all sources, was about fifty-six thousand one hundred dollars. The income of this fund, at six per cent., equal to three thousand three hundred and sixty-six dollars, supplemented by contingent, matriculation, and diploma fees, amounting together to about one thousand one hundred and eleven dollars per annum, composed all the available resources of Jefferson College, the scholarships issued by it having cut off the revenue from tuition.

The annual expenditures of the institution were in excess of its income, although the cash salary of the president was only twelve hundred dollars, and the highest salary paid to a professor was eight hundred dollars.

After the union in 1865 the expenditures for the instruction of the three classes at Canonsburg was increased to the sum of five thousand seven hundred dollars as against three thousand eight hundred and forty-three dollars paid for instruction by Jefferson College before the union.

All which matters and things the defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL.]

President of the Board of Trustees.

Secretary.

28 COMMONWEALTH OF PENNSYLVANIA,
Washington County, ss:

Before me, Alexander W. Acheson, president judge of the twenty-seventh judicial district of Pennsylvania, this day came personally , who, being duly sworn, says that he is of the board of trustees of "Washington and Jefferson College;" that at the meeting of said board on the first day of October, 1869, the foregoing answer was read to and approved by the said board, and the affiant was designated and appointed to verify it; and that he, as , was directed and appointed to affix the seal of the corporation thereto, and sign it for the defendant, which he has done accordingly.

The affiant, on his own behalf, and for and on behalf of the corporation, says that the facts stated in the foregoing answer, so far as they are stated on his actual knowledge, are true, and so far as stated on information he believes them to be true.

Sworn to and subscribed this first day of October, 1869, before me.

A. W. ACHESON,
Pres't Judge.

29 EXHIBIT A.

Call for a convention.

To the alumni of Jefferson and Washington Colleges:

The undersigned, representing jointly, though unofficially, the alumni of Jefferson and Washington Colleges, and believing that they express a wish very common, if not universal, among the sons of both colleges, do hereby invite their brethren, the alumni of both, to meet in conven-

tion at the city of Pittsburgh, on Tuesday, the 27th day of September inst., at 4 o'clock p. m., in the lecture-room of the First Presbyterian Church, to take such action as may be deemed advisable to further the consolidation of the two colleges. It is earnestly hoped that all the alumni who possibly can will be present at the proposed convention, as it is believed that the question of union will probably be decided within the next few weeks.

In behalf of Jefferson College:

Boyd Crumrine.
Francis J. Collier.
Alonzo Linn.
D. H. French.
James G. Dickson.
A. C. M'Clelland.
David M'Kinney.
Robert P. Nevin.
A. Williams.
Thomas Ewing.
J. P. Penney.
John M Kirkpatrick.
Jacob H. Miller.
James P. Sterrett.
John M. Kennedy.
James I. Kuhn.
W. G. Hawkins, jr.
T. J. Bigham.
Algernon S. Bell.
David W. Bell.
James Veech.
James Allison.
R. Patterson.

In behalf of Washington College:

James I. Brownson.
W'm S. Moore.
Thomas M'Kennan.
John H. Ewing.
W. M'Kennan.
D. S. Wilson.
A. T. Baird.
N. Ewing.
R. R. Reed.
James Black.
Marcus Wishart.
David Reed.
Thomas C. Lazear.
Marcus W. Acheson.
J. M. Gallaher.
S. J. Wilson.
J. S. Morrison.
A. P. Morrison.
W'm R. Childs.
O. H. Miller.

The undersigned approve the object of the proposed convention, and unite in the above call.

J. W. SCOTT,
Pres't Washington College.
D. H. RIDDLE,
W'M SMITH,
Prof's, Canonsburg.

30 In pursuance of this call, a very large joint alumni convention met at the time and place designated.

Proceedings of the alumni convention.

The following gentlemen were appointed a business committee, viz: John K. Ewing, esq., W'm M'Kennan, esq., and Prof. Samuel J. Wilson, D. D., from Washington College; and Loyal Young, D. D., David M'Kinney, D. D., and Robert P. Nevin, esq., from Jefferson College.

Papers being now called for, Rev. F. J. Collier, on behalf of Jefferson, and A. W. Acheson, esq., on behalf of Washington, read extended papers proposing plans of union, &c.; which were referred to the business committee.

The convention then took a recess until 7 o'clock in the evening.

After recess, in the absence of the committee on business, the evening was spent in friendly discussion of the whole subject of the proposed union, in which Rev. Messrs. Watson Hughes, J. E. Caruthers, F. J. Collier, John M. Smith, George Frazer, John H. Ewing, esq., Dr. J. I. Brownson, and others took part.

The committee on business, at length, through Dr. M'Kinney, their chairman, reported a paper, which was read, when the convention adjourned until Wednesday morning, at 9 o'clock.

The convention reassembled, and was opened with prayer by the president.

On motion, any literary gentlemen who were present, but not alumni of either college, were invited to participate in the deliberations.

The report of the business committee was then read, and, having been considered article by article, after various amendments was finally adopted as a whole by a unanimous vote; nearly all the votes on the several articles having also been unanimous. It is as follows:

"*Report of the business committee of the alumni of Washington and Jefferson Colleges, at their meeting in Pittsburgh, September 27th, 1864, as read, amended, and adopted.*

"We, alumni of Washington and Jefferson Colleges, sincerely wishing to promote the best interest of education and religion, having met in convention and discussed in a candid and fraternal spirit the proposed union of the colleges, do express our views as follows, viz:

"1. *Resolved*, That we see the hand of Providence pointing to the union of the two ancient colleges whose sons we are, and fixing the present as the time for the happy consummation by such evident facts as
31 these: The great and constantly increasing number of literary institutions in the land; the urgent need in Western Pennsylvania of an eminently influential and richly endowed college; the desire for a union of Jefferson and Washington, so generally entertained, and so frequently and earnestly expressed; the proximity of said colleges, soon to be made more apparent by the completion of a connecting railway; the very unsatisfactory condition of their antiquated buildings; the reduced number of students, partly the result of our national troubles; the inadequacy of the old salaries to meet the demands of the times, and afford the professors a competent support; the difficulty of obtaining aid for either institution in its separate existence; the several offers made by liberal and reliable men to furnish large amounts of funds in case a union is effected; and, depending also upon that event, the probable donation by our legislature of a valuable grant of lands given by Congress to the State for the advancement of agricultural knowledge.

"2. *Resolved*, That inasmuch as the funds which constitute the present endowments of Jefferson and Washington Colleges were contributed for educational purposes by men of various religious creeds, justice urgently demands, and in our opinion it is also very desirable, and, in case of a union, the new institution, whilst being thoroughly Protestant and Evangelical in its government and teachings, should not be under the control of any ecclesiastical body.

"3. *Resolved*, That the following be the plan of union recommended for the adoption of the trustees of the two colleges, viz:

"The two institutions shall be united and consolidated under the name of Washington and Jefferson College.

"All the real estate, college property, and funds of each of the said colleges shall be transferred to and invested in the united institution.

"The scholarships heretofore granted by either of said colleges shall be respected, and their terms fulfilled by the united college.

"The board of trustees of the united college shall consist of twenty-one members, to be selected as follows, to wit: the present board of Jefferson College shall choose ten persons, and the present board of Washington College shall choose ten persons, and the said twenty persons so chosen shall constitute the board of trustees of the united college, and shall have power to fill the remaining vacancy; and vacancies thereafter arising from death, resignation, or otherwise, shall be filled by the said board.

"The control and management of the property and funds of the united college, as well as the election of its president and professors, and the conducting of its business generally, shall be vested in and exercised by the board of trustees.

"At the place where the college proper shall not be located—that is to say, at either Washington or Canonsburg—there shall be es-
32 tablished, as an integral part of the united college, two distinct and separate departments; one to be called the preparatory department, and the other the scientific department of the college; the preparatory department to be of a high grade, and of such a character as to fully prepare students for admission into the freshman class of the college proper, or to the scientific department; the scientific department to afford such instruction in the higher English branches, natural sciences, belles-lettres, mathematics, civil and military engineering, mechanic arts, and modern languages as may be necessary to fully prepare young men seeking education therein for the degree of "S. B." shall be conferred upon the graduates of said department. If practicable, an agricultural department shall be connected with the scientific department.

"Of the income arising from the endowment fund of the united college, a sum equal to at least one-third part thereof shall be specially pledged and exclusively devoted to the use and benefit of the preparatory and scientific departments.

"To overcome a difficulty which seems to be otherwise insuperable, the location of the college proper shall be determined by lot, in a mode to be agreed upon by the boards of the two colleges. Before the lot shall be cast appropriate legislation shall be procured to effect the consolidation of the colleges, agreeably to the foregoing plan, as a fundamental basis of the union, and providing that, as said lot shall result, the location of the college shall be finally and irrevocably fixed and determined; and thereupon the real estate, property, and funds of each of said colleges shall be, ipso facto, vested in and become the property of the united college, the charters of the said colleges shall cease and determine, and their separate existence be merged in the united institution.

"4. *Resolved*, That in case our hopes are realized, commodious buildings should be erected, in the best style of modern architecture, and furnished with everything essential to the comfort and convenience of the professors and students.

"5. *Resolved*, That, on account of their eminent ability, their exemplary demeanor, their faithful services, and their self-sacrificing spirit, the presidents and professors now installed in the colleges we represent are entitled to our highest admiration and esteem, and we will accordingly take pleasure in mentioning their superior claims and commending them to the favorable consideration of the new board of trustees, whose duty

it will be to reorganize and enlarge the present faculties, in the event of a union being consummated.

"6. *Resolved*, That we pledge, as individuals, our earnest and constant efforts to furnish money and appliances to the united college, and to persuade young men to seek instruction there in preference to any other institution.

33 "7. *Resolved*, That a committee be appointed to make known our proceedings to the boards of trustees of Jefferson and Washington, and to urge them to convene at an early day and take action concerning the matter which we so unanimously recommend, stating, as a strong reason for promptness, the determination on the part of Dr. Beatty to withdraw, and not renew, his most generous and long-standing offer of $50,000 if there is no immediate prospect of a union; and, in case said boards adopt the recommendations of this convention, that the said committee be further empowered to co-operate with the said boards in securing such legislative action as may be requisite to carry into effect the plan proposed, and also to secure for the agricultural department a liberal proportion of the congressional grant of lands.

"8. *Resolved*, That in the judgment of this meeting it is extremely desirable that the continued co-operation of all the religious denominations heretofore patronizing these colleges should be secured, and it is therefore recommended to the old boards, in selecting the persons who shall constitute the new board, to give a due representation to each of the ecclesiastical denominations now represented in the boards."

On motion, the business committee, with the addition of Dr. Jacobus as chairman, were appointed the committee provided for in resolution seventh.

THO'S EWING,
A. WILLIAMS,
S. J. WILSON,
Secretaries.

EXHIBIT B.

Extract from the minutes of Washington and Jefferson College, of date April 8, 1868.

The committee to whom were referred the resolutions moved by Mr. Ewing, and so much of the president's report as relates to endowment and defects in the organization of the college, submitted the following report:

"That they have given to the vitally important subjects submitted to them the consideration which the limited time afforded them would allow. The committee, in common with all the members of this board who were members of the old boards of Jefferson and Washington, are fully aware that the existing organization was brought about un-

34 der what was sincerely believed to be a necessity, and under a belief that time and effort would render it successful. The motives and purposes were good, and the prospect at least hopeful.

"But the committee are constrained to say that, after three years of the best directed efforts of which this board were capable, aided by the president and other friends of the college, this scheme has proved a failure; and we entirely concur in the conclusion expressed by the president and declared in the first of the resolutions before us, that further effort to secure additional endowment upon the present basis of organization will be unavailing, because of the almost entire want of public

confidence in the plan and workings of the union provided for by our charter.

"That some radical change is imperatively demanded for the continued existence and usefulness of the college is, in the opinion of your committee, a deduction from existing embarrassments which is irresistible; but what that change should be, your committee do not feel themselves able or warranted, owing to the short time allowed for consideration, to recommend. At present they can only submit to the board for adoption the following resolution, viz:

"*Resolved*, That a committee of six be appointed by the president, to whom the whole subject of devising a proper remedy for existing defects of organization be referred, with instructions to report to the meeting of the board in August next.

"JAMES VEECH.
"A. W. ACHESON.
"JA'S McCULLOUGH.
"JA'S I. BROWNSON.
"JAMES ALEXANDER."

The report of the committee was accepted and adopted, and, in accordance with the foregoing resolution, the president appointed the following committee, viz: Messrs. Sterrett, Veech, Sherrard, Acheson, McDaniel, and McMillan.

EXHIBIT C.

Extract from the minutes of Washington and Jefferson College, of date August 5, 1868.

The paper as a whole was then adopted, and is as follows:

"1st. That as soon as the necessary legislative authority can be obtained, and preliminary arrangements made, the several departments of the college shall be closely united and located either at Canonsburg, Washington, or some other suitable place to be selected and fixed in the manner hereinafter specified.

"2nd. The location of the college shall be determined by the board of trustees, by a vote of two-thirds of the members present at a regular meeting, or at a special meeting called for that purpose, if they can agree; if not, the same shall be referred to a commission of five gentlemen, who shall visit the places named and such others as they may deem advisable; inquire into the condition and value of the college property; receive offers of donations and contributions to the college; hear those who may be interested and desire to say anything on the question submitted to them; and, after obtaining all necessary information within their reach, and taking into consideration all the advantages and disadvantages of each locality, and everything that may have a bearing upon the future prosperity and welfare of the college and the advancement of liberal education, they, or any four of them, shall report in writing where, in their judgment, the united college shall be located; and thereupon the board shall proceed, with as little delay as possible, to carry into effect their recommendation. In determining the location, the board shall proceed in the same manner and consider the same matters as above provided for in the case of the commission.

"3d. The commission aforesaid, if resorted to, shall be chosen by the board, but a vote of two-thirds of the members present at a regular

meeting, or at a special meeting called for that purpose, shall be necessary to a choice; and at the same time five alternates shall in like manner be chosen to supply the places of any who may decline to serve, said alternates to be called upon in the order in which their names may stand on the list as arranged by the board.

"4th. A committee of three, consisting of the president of the board, one member of the board from Washington or vicinity, and one from Canonsburg or vicinity, shall, as far as may be convenient, attend the meetings of the commission and assist them in obtaining such information as may be desired. The expenses of the commission shall be paid by the treasurer upon the order of said committee."

On motion of Dr. Marshall, it was—

Resolved, That a committee of two be appointed to make application to the legislature for authority to carry out the recommendations contained in the report of the committee on college reorganization.

Judge Sterrett and Mr. Veech were appointed.

EXHIBIT D.

Extract from the minutes of Washington and Jefferson College, of date August 6, 1868, showing the action of the Alumni Association.

An interview was accorded to Rev. Dr. Cooper and Rev. Messrs. Marquis, Sherrard, and Waugh, a committee of the Alumni Association, who presented the following paper, which was read and accepted:

36 "The committee appointed by the Alumni Association of Washington and Jefferson College to bring a report expressive of the mind of the association in relation to this united college would present the following resolutions:

"1. *Resolved*, That we continue to feel an unabated interest in the prosperity of this institution.

"2. *Resolved*, That it is the heartfelt conviction of the association that a complete consolidation of the two departments should be immediately effected, so as to have them occupy buildings located in the same place.

"3. *Resolved*, That deeply sensible of the difficulties connected with the question—where shall this united college be located?—it is the conviction of *of* this association that all merely local interests should be made to yield to considerations bearing directly upon the enlarged and permanent prosperity of the institution.

"4. *Resolved*, That so intimately is the prosperity of this college identified with the material interests of the people of Washington County, that a combined and earnest effort on the part of the people of this county is their true policy; and it is our earnest hope that there is that degree of Christian intelligence and liberality throughout this community that will lead them to furnish the trustees of this college with the pecuniary means of placing it in every respect upon a level with any literary institution in the land.

"5. *Resolved*, That we as alumni will stand by and support the College of Washington and Jefferson, let it be located where it may, provided that immediate action be taken fixing, so far as practicable, its location at one place."

For the information of the alumni committee, the secretary read the report of the committee on college reorganization adopted last evening.

36½ (Indorsed:) No. 165. Oct. & Nov. term, 1869. Supreme court of Pennsylvania, western district. Francis J. Collier and others, plaintiffs, vs. Washington and Jefferson College, defendant. Answer of defendant. Filed Oct. 4, 1869. M. W. Acheson and D. S. Wilson.

37 In the supreme court of Pennsylvania, in and for the western district, No. 165, Oct. & Nov. term, 1869.

FRANCIS J. COLLIER, WILLIAM JEFFREY ET AL.
v.
WASHINGTON AND JEFFERSON COLLEGE. } Bill in equity.

THO'S J. KEENAN, *Proth'y:*

Put down above case for argument on bill and answer.

GEO. SHIRAS, JR.,
JA'S VEECH,
BOYD CRUMRINE,
Complainants' Counsel.

Filed Oct. 12, 1869.

38 Supreme court of Pennsylvania, west'n dist., No. 165, Oct. & Nov. T., 1869.

FRANCIS J. COLLIER ET AL.
v.
WASHINGTON & JEFFERSON COLLEGE.

The opinion of the court was delivered at Philadelphia, Jan. 3, 1870, by THOMPSON, C. J.:

These three bills, relating to the same institution, and involving considerations common to all, were argued together; and as they can be most satisfactorily disposed of together, we now propose to do so.

The first of them raises the question whether the contract of scholarships between the complainants and others and Jefferson College does not interpose a constitutional barrier to any legislative grant of authority to the trustees of the college to surrender its former charter and accept a new one, by which the college was eventually removed from Canonsburg to Washington, in the same county.

The second is by the trustees of Jefferson College, in which the same question is raised by them; and

The third is by some of the members of the board of trustees of Washington and Jefferson College, in which they complain of the defendant that its trustees are, under the pretence of authority conferred by the act of 26th February, 1869, about to violate the provisions of the act of 4th of March, 1865, by which Washington and Jefferson College was authorized to provide for the instruction of the senior, junior, and sophomore classes at Canonsburg, and students in the freshman class, and in the scientific and preparatory departments, and the department of agriculture and art at Washington; and in disregard thereof, about to unite all the classes at Washington, and to remove thither the library and other movable property of the college, and to sell or dispose of its real estate, charging that such intended acts and doings would be and are in contravention of the rights, duties, and obligations conferred by the act of the 4th of March, 1865, referred to. Each of these cases was set down, and all heard together on bill and answer. The argument took

a wide range, and counsel had an attentive hearing, such as the magnitude of the seeming consequences of a determination of the controversy demanded. The questions presented, however, were not numerous nor complex; and, notwithstanding the possible discontent which may for a time follow the displacement of an ancient and cherished institution of learning, if the law require it, we must so determine. We do not make the law.

A question to be answered in passing on the merits of the first of these bills is: Could Jefferson College surrender its charter with the consent of the legislature, and accept a new one consolidating it with another institution or college of the same nature and kind, without the assent of the holders of scholarships in the college?

The general right of a private corporation to surrender its franchises may possibly have exceptions, but undoubtedly this is the rule. This is generally described as an inherent right, which would necessarily defeat any attempt by legislation to enforce upon a corporation qualities of perpetuity. Such a thing would be impossible in the nature of things. Corporations, like individuals, die by the decay or loss of their vital functions, and this effectually defies authority to render them perpetual. A surrender of a franchise is the voluntary death of the corporation, and is one mode by which it may cease to exist; 19 John., 474; 8 Pet., 381. If anybody ever did dispute the right of a corporation to surrender its franchises of its own mere motion, it is not likely that such a contest about the question could be long maintained where both parties, the State and the corporation, the grantor and grantee, consent to it absolutely or on condition. This I take to be incapable of being disputed, and the history of this college will show that this is just what has transpired in its case. It is undisputed in the pleadings.

But independently of this mutual consent, there is in the act of the 15th Jan., 1802, the original act of incorporation of Jefferson College, a reservation of a right to do all that was done by the legislature by the act of 1865. In the 18th section of the original act it is provided "that the constitution of the college hereby and herein established shall be and remain the irrevocable constitution of said college forever, and the same shall not be altered by any ordinance, or by law of the trustees, nor in any other manner than by an act of the legislature of the commonwealth." In The Commonwealth v. Bonsall, 3 Wh., 559, a provision like this was held to be a good reservation of the right by legislature to change and alter the charter of the corporation of the "Public
39 School of Germantown." The reservation in that act of incorporation was in the same words almost as those used here; there is not a shade of difference in their meaning, and but a single literal difference. Granting the rule to be that a private charter of the date of 1802 could not be changed by the legislature without the assent of the corporators, or by virtue of the right reserved, that such charters stood on the footing of contracts, we have no difficulty here, for there is not only assent here, but a sufficient reservation of the right to sustain the action of the legislature in the enactment of 1865. So far as that act is concerned, nobody objected to its passage, nor to what was done under it in consolidating Washington and Jefferson Colleges into one body. The holders of the scholarships now complaining made no objection, and we must presume them to have been satisfied. What was done was not done in a corner, and they do not allege they were uninformed of it. Thus the surrender of the charter of Jefferson College, and the acceptance of the new one, may strictly be said to have been with the assent, in point of fact, of the trustees, the legislature, and the scholarships.

This is an assent of every interest to the new organization, and ought to silence all complaints by any person having a legal right to complain or interfere.

But in order to meet the objection of the holders of scholarships in the Jefferson College directly on the merits of their objection, which is, that these contracts are impaired by the acts of 1865 and 1869, let us consider it, and see whether there is anything sound in it. If I understand it, it is supposed that these scholarships are impaired in value by the establishment of Washington and Jefferson College at the town of Washington, some seven miles distant from Canonsburgh, under the authority of the act of the 26th Feb., 1869. It may be noticed that these scholarships are, as stated in the certificates, for the endowment of Jefferson College. This designation does not alter the matter. They are contracts for tuition in consideration of a prepaid subscription, and as ordinary contracts are to be interpreted. This is their effect, no more and no less.

By the act of March, 1865, Jefferson and Washington Colleges were consolidated under a new charter accepted by both. The legislature was careful, in granting the new charter, to avoid the very question now introduced; and, to do entire justice to the holders of certificates and scholarships and others, provided as follows: "And all the several liabilities of said two colleges or corporations, by either of them suffered or created, including the scholarships heretofore granted by and now obligatory upon each of them, are hereby imposed upon and declared to be assumed by the corporation hereby created, which shall discharge and perform the same, without diminution or abatement." The whole and entire of these contracts are thus saved in their identity and integrity. This was one of the terms of acceptance of the new charter, and there is no pretence even now that it is not obligatory on the new institution, and may be enforced against it after acceptance of the charter by every means known in the law applicable to it under the original charter. The nature of the new college, as an institution of learning, the subjects and mode of instruction, organization, and even the professors, I believe, are the same as they were in Jefferson College. There is no pretence of impairment of these contracts on grounds of dissimilarity of instruction, or capacity on part of the new institution to impart it. In passing, I may say that no objection on any ground was made to the change during the three years in which the college acted partly at Canonsburgh and partly at Washington, under the most cumbrous and unheard-of arrangement for a college.

It is not, therefore, on either of these grounds that these scholarship contracts can be or are claimed to be impaired, but another and different ground is insisted on, namely, that the contract for the tuition, &c., contained therein was to be performed at Canonsburg, and not elsewhere.

When we recur to these contracts there is no word or provision to this effect in them, nor in the plan or prospectus put forth to induce investments in them. No doubt, it was expected, from the fact that Jefferson College was located at Canonsburg, that that was to be the place of the performance of the contracts. On the face of the contracts, and there is nothing but these in the case, the contracts are personal to the corporation, and it could perform or offer performance anywhere, whether at Washington or Canonsburg. The contracts are complete, so as to bind both contracting parties without designating the place. The party liable to perform, as in any other personal contract, is liable on it wherever found. It was not even an incident of the contract that

it was to be performed at Canonsburg. It was an expectancy, perhaps; even t..at we do not know; we simply infer it, not from the contract, but from the situation of the contracting parties. We all know that even the incidents of contracts may be changed without impinging on the constitutional prohibition against impairing contracts. Stay laws, which change the remedy and rights of the parties to some extent, at least, have from time to time been passed in this and other States, and they have been uniformly sustained wherever the contract did not specially provide to the contrary. The cases of Chadwick v. Moore, 8. W. and S., 50; Bunn, Raiguel & Co. v. Gorgas, 5 Wr., 441; and Bilmyer v. Evans & Rhodebaugh, 4 Wr., 324, contain all that need be cited on this point, and in regard to the distinction noticed. In these cases, and in every one of the kind, it has been usual to present the argument, that the contract having been made in view of the remedy existing at the time for its enforcement, it was a part of it, or at least an inseparable incident of it, and to permit it to be controlled by a new rule was to impair the contract. These are instances, it must be admitted, very near the outer verge of legislative power, but they have been always sustained, and in these apparently objectionable features are incomparably stronger than anything which can be assumed or predicated of the contracts in question.

The argument in support of the plaintiff's position not being sufficiently self-sustaining, an equity is invoked to its aid. That, as a consideration in the question before us, is outside of the case, excepting as it may serve to illustrate the argument. This equity is, that the subscribers for scholarships made them in view of their proximity to Jefferson College, and convenience of maintaining scholars at home while attending upon a collegiate course of instruction, and that they will be deprived of this advantage by the removal of the college to Washington. As nothing of this appears by the contracts, and there is no proof of it aliunde, it may or may not be so. It may have induced some or all to subscribe; but this is surmise. Certain it is, it could have had no effect on subscribers for perpetual scholarships; for the college, in such cases, finds boarding, lodging, and tuition to the scholar, and it is no matter to the subscriber where that may be done, so far as expense is concerned; that is a matter of indifference to him. But disappointed expectations, the motive in entering into a contract, do not *effect* the existence of the contract. All that may occur, and the contract remain in full vigor. No constitutional provisions extend to cure this oft necessary result. We must not at this point overlook the great fact in every contract, that it is always made in view of and subject to the natural or legal contingencies affecting it, or to which the contracting parties may be subject. If a contract be made with a corporation, to be executed in the future, the contingency of existence must be regarded as having been in view as much as between man and man. The risk is taken by both parties. They knew themselves to be subject to such contingencies, and not the contingencies subject to them. It must be presumed that the subscribers to these scholarships knew that the legislature might, with the assent of the corporation, alter its fundamental law, or might do it in the terms of the reservation already referred to, and thus defeat their motive for subscribing, and that it had power to do so, only preserving their contract. This might be done, and this the law presumes all parties to have known. Therefore in no sense could just expectations even have been disappointed by the act of removing the college to Washington. The case of the Genesee College, and the opinion of Judge Johnson, at chambers, I presume, have been considered. The occasion of the deliv-

ery of that opinion was upon a motion to vacate an injunction order restraining the removal of the college at Lima to Syracuse, pending litigation as to the right to remove. It is true he seems to have gone beyond the limits of the question somewhat, and discussed the question of scholarships, importing the force of a contract into the motives for subscribing; but, as I understand the case, (no facts being reported with the opinion furnished us on a separate leaf,) the contest was between the scholarships and the college, unaffected by the authority of the legislature. This might make a material difference between that case and the one in hand. I incline to think it would. Be that as it may, if the case goes further than this, while we acknowledge great respect for the learned jurist who delivered the opinion, we cannot follow it to the extent claimed here.

Lastly, the argument in this case culminates in an assumption that the legislature, and corporation of Jefferson College, and so of any other *other* corporate body, may be controlled in changing, altering, repealing, and surrendering the charter by the contractors with the corporation. The one may consent, and the other act upon such consent, and yet this may be set aside by outside parties. This position is only true of corporations generally to the extent of leaving intact contracts and preserving legal remedies. Obviously no more. That is always provided for by the legislature. The 10th sec. of art. 1 of the Constitution of the United States would probably require this, although the 16th sec. of art. 1 of the constitution of the State expressly provides only that, in repealing or revoking charters by the legislature, no injury be done to the corporators. But we need not elaborate this consideration, as both the contract and remedy are preserved in this case.

In conclusion, so far as the first part of these cases is concerned, it must be recollected that Washington and Jefferson College was incorporated by act of 4th of March, 1865, and located for certain specified purposes both at Canonsburg and Washington; that this act was accepted by both of the old institutions to be consolidated. Thenceforth the corporation is under that act; the act of 24th February, 1869, therefore, providing for its removal, as the trustees or a majority might decide, was clearly within the constitutional power of the legislature, sec. 16, art. 1, const. Penn'a, and, being assented to, it is valid beyond question or controversy.

For all these reasons the bill in this case is not sustained, and must be dismissed. Bill dismissed at the costs of the plaintiffs.

2. As to the second of the above-mentioned bills, viz, The Trustees of Jefferson College v. Washington and Jefferson College, but little is required to be said. We have virtually decided it in holding, as we have done in the first of these cases, that by the acceptance of the act of 1865, in connection with Washington College, it ceased to exist under its original charter. There is, therefore, now no such board as the trustees of Jefferson College, with the right of suit in the name of that corporation; 8 Pet., 281. Consequently, the plea of the defendant is sustained, and this bill must be dismissed.

Bill dismissed, and William Jeffery, who filed, is ordered to pay the costs, no other names appearing of record as complainants, and there being no such legal board of trustees as that which purports to be plaintiffs in the bill.

3. The third and last of these bills is filed by a minority of the board of trustees of Washington and Jefferson College, and they claim that the act of assembly of 1869, authorizing the removal of the college as consolidated by the act of 1865, in obedience to the decision of the requisite

number of trustees, is unconstitutional, for the reason, it is alleged, that it infringes the contracts of scholarships with Jefferson College, which they assume could only be performed by the college at Canonsburg. This question we have disposed of in our views in regard to the first of these cases. We need not repeat them, but refer to them as showing that the ground of unconstitutionality is not tenable. It is difficult to discover wherein the act of 1869 is obnoxious to the charge made, and the act of 1865, which was not complained of by the plaintiffs, was not. By that act the freshman class and preparatory department of the college were to be at Washington, and the senior, junior, and sophomore classes were to be taught at Canonsburg. Now, unless the scholarships exclude the freshman and preparatory department of the college, which they do not, there was just the same impairment of contract, if any, of scholarships in obliging scholars to go to Washington for tuition in the preparatory department and freshman class as to require them to go there to pass through the remainder of the course. Yet this objection was not made by the plaintiffs or anybody else. This, I admit, is rather argumentum ad hominem than an illustration of the question on principle; but that, we think, we have already done.

To another charge in the bill the respondents answer that they intend to remove the classes of the college to Washington, the place fixed as the site of the college under the provisions of the act of 1869, and to dispose of the realty strictly pursuant to the authority of the act; and as this was not replied to by the complainants, it must be taken to be true; and as we have already in the first of these cases held the act of assembly of 1869 to be constitutional, it follows that this bill also must be dismissed at the costs of the complainants.

Ordered, that the several bills of the several plaintiffs herein considered be dismissed at the costs of the several plaintiffs in the said bills respectively, and that it be so entered in each of the cases.

Per curiam.

41 In the Supreme Court of the United States.

To the Honorable William Strong, associate justice of the Supreme court of the United States:

The petition of Francis J. Collier and others most respectfully represents that they, as complainants, filed a bill in equity in the supreme court of Pennsylvania, at No. 165, Oct'r and Nov'r T., 1869, against "Washington and Jefferson College," alleging that contract subsisting between the College of Washington and Jefferson College, created by virtue of an act of assembly of Pennsylvania, approved 4 March, 1865, and duly accepted by said colleges, was about to be impaired and destroyed by the operation and enforcement of another act of assembly, approved 26th February, 1869, and claiming the protection of the constitution of the State of Pennsylvania and the Constitution of the United States,

and praying a decree awarding an injunction to prevent the
42 operation of said last-mentioned act of assembly, and a declaration of its nulity, a copy of which said bill in equity is hereto annexed and made part of this petition; that answers were filed by said defendants, and the case put down for argument before the said supreme court of Pennsylvania upon bill, answer, and pleadings, and was argued by counsel; and that said court, after consideration thereof, dismissed said bill, and refused the injunction prayed for, and made a final decree accordingly.

Wherefore your petitioners claim that they are wronged, and pray that a writ of error may issue from this honorable court to the said supreme court of Pennsylvania for the western district, upon the ground that the petitioners' alleged rights come within and are entitled to the protection of the 1st division of the 10th section of the Constitution of the United States.

JA'S VEECH,
Att'y for Petitioners.

43 In the supreme court of Pennsylvania, western district, No. , October and November term, 1869.

FRANCIS J. COLLIER, WILLIAM JEFFERY, AND others
vs.
WASHINGTON AND JEFFERSON COLLEGE.

To the honorable the judges of the supreme court, sitting in equity:

Francis J. Collier, David C. Houston, William Jeffery, John T. Pressly, John Hays, bring this their bill of complaint against Washington and Jefferson College, and thereupon the said complainants aver:

1. That the institution of learning commonly known as Jefferson College was incorporated by an act of assembly, approved the 15th day of January, A. D. 1802, entitled "An act for the establishment of a college at Canonsburg, in the county of Washington, in the Commonwealth of Pennsylvania," a true copy whereof is hereto appended.

2. That the said Jefferson College was duly organized under the provisions of said act, and accumulated from time to time a large amount of money and property, amounting in value in the aggregate to 150 thousand dollars; that the board of trustees of said college became recipients of a large amount of funds, to wit, not less than thousand dollars, donated or bequeathed by benevolent persons for the specific purpose of educating poor and pious young men for the gospel ministry; that the said board of trustees put into operation, about January 1st, 1863, a plan of endowment, whereby, for certain sums of money, to be paid by subscribers to the plan, scholarships were granted by the said college, of which not less than fifteen hundred were sold, of which some twelve hundred are still outstanding; that many of these scholarships were sold by the said college to persons resident in or near Canonsburg, in the county of Washington, who were induced to purchase said scholarships because thereby the said college contracted and agreed to furnish tuition to the beneficiaries of said scholarships at Canonsburg, in the county of Washington, as appears in and by the certificates of said scholarship, a true copy whereof is hereto appended.

3. That on the 4th day of March, 1865, the general assembly passed, and the governor approved, an act entitled "An act to unite the colleges of Jefferson and Washington, in the county of Washington, and to erect the same into one corporation, by the name of Washington and Jefferson College," a true copy whereof is hereto appended; that the said act was duly accepted by the said Jefferson College and Washington College, and a new organization was effected in pursuance of its provisions; that by said act it was enacted that buildings and property of said Jefferson College should remain at Canonsburg, in the county of Washington, and that the senior, junior, and sophomore classes should pursue their studies there, and that all the liabilities of said Jefferson

College, including the scholarships theretofore granted, were imposed upon and declared to be assumed by the new corporation.

44 4. That the said act of March 4th, 1865, was accepted by Jefferson College upon the strength of the said provisions of said act, retaining the college buildings and said classes at Canonsburg, and upon the faith that all the obligations then devolving upon said Jefferson College would be fully met and performed by the new corporation, to be known as Washington and Jefferson College.

5. That these complainants are informed and believe that the said Washington and Jefferson College, in utter disregard of the terms of said act of 1865, are about to dispose of the said college buildings situate in Canonsburg, and are about to wholly remove the college property and classes from Canonsburg; that said defendants justify their declared intention to remove said college, its classes and property, from Canonsburg, by alleging the terms of a certain act of assembly, approved the 26th day of February, 1869, whereby it is claimed that they are authorized, by a vote to that end by two-thirds of the board of trustees, to remove said college and its classes and property from Canonsburg to Washington, or elsewhere; that a true copy of said act of February 26th, 1869, is hereto appended.

6. That the said act of March 4th, 1865, providing for the continued maintenance of Jefferson College, and of the senior, junior, and sophomore classes at Canonsburg, and the acceptance thereof, and the organization under its provisions constituted a contract between the parties thereto; that the said scholarships, wherein the said Jefferson College agreed to give tuition in Canonsburg, in the county of Washington, constituted contracts between said Jefferson College and the proprietors of said scholarships; and by said act of March 4th, 1865, it was made the express duty of the new corporation thereby created to fulfil and carry out the said contracts and obligations.

7. That the said act of February 26, 1869, is invalid and unconstitutional, because it directs the removal of the college buildings and classes from Canonsburg, without the consent of those holding scholarships as aforesaid, and of those who have donated funds for the specific purpose of educating young men at Canonsburg, thereby impairing the obligation of subsisting contracts; that said act of February 26th, 1869, is therefore repugnant to the 17th section of article 9th of the constitution of Pennsylvania, and to the 10th section of the Constitution of the United States.

8. That these complainants, as members of the boards of trustees of Washington and Jefferson, mindful of the duties and obligations devolved upon them by the said act of March 4th, 1865, have opposed, by argument and by their votes as members of said board, the removal of the college buildings, classes, and property from Canonsburg, in the county of Washington; but the majority of said board are about to remove said college property and classes aforesaid from Canonsburg to Washington, a village seven miles distant from Canonsburg; that these complainants hence need equitable relief as follows:

1. That the said act of February 26th, 1869, be declared inoperative, null, and void; as repugnant to the 17th section of article 9th of the constitution of Pennsylvania, and to section 10th of the Constitution of the United States.

2. That now, by a preliminary and hereafter by a final injunction, the said defendants, and each and all of them, be enjoined and restrained from removing, or causing to be removed, the said college, its property and classes from Canonsburg to Washington or elsewhere.

3. Such other and further relief as to your honors shall seem meet, and as the exigences of their case may require.

(Signed) F. J. COLLIER.
WILLIAM JEFFERY.
DAVID C. HOUSTON.

JAMES VEECH,
GEO. SHIRAS, JR.,
BOYD CRUMRINE,
Solicitors for Complainants.

45 Personally before me came , one of the above complainants, who, being duly sworn, deposes and says that he has read the foregoing bill of complaint; that the allegations therein, so far as they contain matters within his own knowledge, are true, and so far as they contain matters on information and belief he believes them to be true.

(Indorsed:) Supreme court of Penn'a, western district. No. . Oct. and Nov. term, 1869. Francis J. Collier, William Jeffery, and others vs. Washington and Jefferson College, A. W. Acheson, A. W. Murdock, and others. James Veech, Geo. Shiras, jr., solicitors for complainants. "Veech."

45½ No. , in the Supreme Court of the United States.

FRANCIS J. COLLIER & OTHERS
vs.
WASHINGTON AND JEFFERSON COLLEGE.

And now, to wit, April 25, 1870, the within petition presented at chambers; whereupon it is ordered that the clerk issue a writ of error to the supreme court of Pennsylvania, to bring up the record & proceedings and decree in a certain cause in said court in equity, wherein the parties within named are plaintiffs & defendants, being No. 165, Oct. & Nov'r T,, 1869, of said court for the western district of Pennsylvania, at Pittsburgh.

W. STRONG, *J. S. C.*

46 Know all men by these presents that we, James S. Negley, of Pittsburgh, and Geo. W. Woodward, of Wilkesbarre, Pa., are held and firmly bound unto Washington and Jefferson College in the full and just sum of two hundred and fifty dollars, to be paid to the said Washington and Jefferson College, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and seventy.

Whereas lately, at a supreme court of the State of Pennsylvania, in a suit depending in said court between Francis J. Collier, David C. Houston, William Jeffrey, John T. Pressley, and John Hays, decree was rendered against the said Francis J. Collier et al., and the said Francis J. Collier et al. having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Washington and Jefferson College, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Francis J. Collier et al. shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) JA'S S. NEGLEY, [L. S.]
GEO. W. WOODWARD. [L. S.]

Sealed and delivered in presence of—

Approved by—
(Signed) W. STRONG.]L. S.]

47 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of the State of Pennsylvania in & for the western district, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Pennsylvania before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Francis J. Collier, David C. Houston, William Jeffery, John T. Pressly, and John Hays, complainants, and Washington and Jefferson College, respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in
48 favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Francis J. Collier, David C. Houston, William Jeffery, John T. Pressly, and John Hays, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-nine.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

W. STRONG,
Asso. Jus. Sup. Court U. S.

49 The United States of America to Washington and Jefferson College, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Pennsylvania, wherein Francis J. Collier, David C. Houston, William Jeffery, John T. Pressly, and John Hays are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered againt the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Strong, associate justice of the Supreme Court of the United States, this 26th day of April, in the year of our Lord one thousand eight hundred and seventy.

W. STRONG,
Asso. Jus. Sup. Ct. U. S.

50 Service accepted by respondents April 30th, 1870.

D. S. WILSON & M. W. ACHESON,
Sol's for Resp'ts.

51 Supreme court of Pennsylvania, west'n dist., No. 165, Oct. & Nov. term, 1869.

FRANCIS J. COLLIER, WILLIAM JEFFREY, ET AL.
vs.
WASHINGTON AND JEFFERSON COLLEGE. } Bill in equity.

I, Tho's J. Keenan, prothonotary of the supreme court of Pennsylvania in and for the western district, do hereby certify that the foregoing pages hereto annexed contain a full and true transcript or copy of the docket entries and of the entire record and opinion of the said supreme court (Thompson, C. J.) in the above-entitled case as same are on file in my office.

Attest my hand and official seal at Pittsburgh, in the west'n dist., this 30th day of April, A. D. 1870.

[SEAL.]

THO'S J. KEENAN,
Pro. Sup. Ct. of Penn'a, W. D.

(Indorsed:) No. 165. Oct. & Nov. T., 1869. Francis J. Collier et al. vs. Washington & Jefferson College. Copy of docket entries. Transcript of record & copy of opinion of the supreme court of Penn'a.

(Indorsement on cover:) No. 471. Francis J. Collier, David C. Houston, William Jeffrey, John T. Pressly, and John Hays, plaintiffs in error, vs. Washington & Jefferson College. Pennsylvania sup. court.

Filed 25th July, 1870.

REC. 471—3